



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street

San Francisco, CA 94105-3901

VIA FACSIMILE

9 November 1994

Commander
Western Division
Naval Facilities Engineering Command
ATTN: Mr. George Kikugawa, Engineer-in-Charge
Code 09ER3GK
900 Commodore Drive
San Bruno, California 946066-2402

Re: Site 15 ACTION MEMORANDUM DRAFT, Naval Air Station Alameda

Dear George:

The U.S. Environmental Protection Agency (U.S. EPA) has completed its review of the subject draft action memorandum. The Agency's review has determined that the major area of concern with the draft action memorandum is the Navy's failure to adhere to the procedures for ARARs in conducting removal actions, particularly regarding non-time critical removal actions. Specifically, the document fails to identify federal ARARs nor does it describe efforts made to identify state ARARs. It should be noted that the absence of an ARARs analysis in any form was identified as the primary deficiency with the EE/CA also.

As a result, U.S. EPA is unable to provide substantive comments on the ARARs in the draft action memorandum at this time because it is virtually impossible to discern what substantive cleanup standards have been identified for this removal action and the legal basis for these standards. The draft Action Memorandum needs to be substantially revised to correct the deficiencies discussed in our review comments which are included in this letter.

SPECIFIC COMMENTS

1. P. 11 - ARARs - Failure to Follow ARARs Process; Lack of State Input

Guidance on the ARARs process during CERCLA removal actions is set forth in a document entitled Superfund Removal Procedures: Guidance on the Consideration of ARARs During Removal Actions, EPA/540/P-91-011 (September 1991). As this guidance document explains, the Action Memo should set forth the following information concerning ARARs:

- a) A list of federal ARARs identified for the site that are deemed practicable;
- b) A brief description of efforts made to identify state ARARs;
- c) A list of state ARARs determined to be practicable; and
- d) A list of federal and state standards determined to be ARARs, but for which compliance was determined to be impracticable.

These and other requirements are discussed on page 26 of the above-referenced guidance document.

The Action Memo for Site 15 fails specify the federal ARARs that were considered but deemed impracticable, fails to describe the efforts made to identify state ARARs, fails to list the state ARARs determined to be practicable, and fails to list the state ARARs that were considered but deemed impracticable. The Action Memo should be revised to incorporate these matters.

With respect to the identification of state ARARs, the Navy should follow the procedure specified on pages 13-20 of the above-referenced guidance document. As this document explains, the state must be provided with written notice about the proposed removal action, provided with site information, and specifically requested to identify potential ARARs in writing. Once the state has identified the requirements that may be ARARs, the Navy should determine which requirements are ARARs using the procedures outlined in the NCP.

2. P. 11 - ARARs - Substantive Comments

EPA is unable to provide substantive comments on the ARARs section at this time because it is virtually impossible to discern what substantive cleanup standards have been identified for this removal action and the legal basis for these standards.

For example, the Action Memo states that "it is practicable to comply with the Clean Water Act as it pertains to the discharge of harmful quantities of hazardous substances to the waters of the United States." The Action Memo does not cite the particular provision of the Clean Water Act at issue or the specific requirement imposed by such provision. Indeed, it is unclear from this statement whether the discharge will be into groundwater or surface water, which contaminants will be discharged, and whether the contaminants will be contained in wastewater or soil. Different federal and state ARARs will be triggered depending upon the nature of the discharge. The Action Memo should describe the activity that will trigger a Clean Water Act ARAR, provide a citation to the specific requirement identified as an ARAR, describe the substantive requirement imposed by the ARAR (specific effluent limitation, for example), and provide a similar analysis of state ARARs.

The Action Memo states that the Navy has determined that it is practicable to comply with the Resource Conservation and Recovery Act (RCRA) Subtitle C requirements governing standards for disposal of hazardous waste. As an initial matter, it should be noted that the federal RCRA program has been delegated to the State of California. Consequently, the provisions of the California Hazardous Waste Control Act, Health and Safety Code Section 25100 et. seq. and the regulations promulgated thereunder should be cited as ARARs. The Action Memo should provide specific citations to the RCRA land disposal requirements that are ARARs and should also address other RCRA requirements that may be ARARs (such as RCRA storage, treatment and corrective action requirements).

Finally, the Action Memo sets a numerical cleanup goal for PCBs and lead in soil, but does not explain the legal basis for this conclusion. The Action Memo claims that EPA and DTSC have approved these cleanup standards in the past, but does not provide specific citations to support this conclusion or provide any evidence that these standards are protective of human health and the environment. The Action memo should be revised to correct these deficiencies.

3. ARARS - General Comments

For the reasons discussed above, the ARARS section of the Action Memo does not comply with CERCLA requirements. The Navy should consult the above-referenced guidance document, should ask the State of California to identify state ARARs, should perform a new ARARS analysis and revise the Action Memo, bearing in mind the points discussed above, and should provide the revised Action Memo to EPA and the State of California for review. EPA is providing additional comments to assist the Navy in revising the Action Memo and strongly encourages the Navy to seek the assistance of counsel in performing the ARARS analysis.

As a general guideline, when citing statutes and regulations as ARARS, the entire statute should not be cited (i.e. RCRA or the Clean Water Act). Rather, citations should be to the particular section or sections of the statute or regulation which is the ARAR. The requirement imposed by the ARAR should be identified and the activity triggering the ARAR should be specified. The following format may be helpful:

a) State the statutory or regulatory source or basis for the ARAR. For example, the California Hazardous Waste Control Act is the source for state RCRA regulations.

b) State the standard, requirement or limitation that is an ARAR. For example, CCR Title 22, Div. 4.5, Chapter 14, Article 16, Sections 66264.600 - 66264.603.

c) Describe the requirement. For example, to whom does the requirement apply? (e.g., applies to owners of facilities that

treat, store, or dispose of RCRA hazardous wastes in miscellaneous units). What is the requirement?

d) Explain how the requirement applies to the remedial or removal activity to be undertaken.

e) State whether the requirement is applicable or relevant and appropriate. In the case of a removal action, explain whether the ARAR compliance with the ARAR is practicable or impracticable. If compliance is impracticable, explain the reason for this determination.

4. P. 4 - NPL

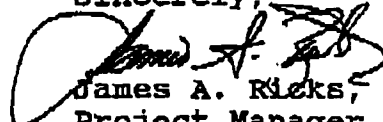
Typo: "National Priority List." Should be National Priorities List.

5. P. 10 - Proposed Action Description

This section should indicate whether the scope of the proposed work has changed as a result of public comment on the EE/CA. An example cited in OSWER Directive 9360.3-01, page 18, is as follows: "Further drinking water sampling will be conducted in response to comments received at the public meeting."

Should you have any questions regarding our review comments or require additional information, please contact me at (415) 744-2402.

Sincerely,


James A. Kleks, Jr.
Project Manager

CC: T. Lanphar CAL EPA (DTSC)
J. Nusrata, CAL EPA (RWQCB)
Lt. Cmdr. M. Petouhoff, NAS Alameda